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**MRA Food, Inc. d/b/a Casablanca Foods, Inc. and  
United Food and Commercial Workers Union,  
Local 400.** Case 5–CA–32267

June 23, 2005

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on December 16, 2004, the General Counsel issued the complaint on February 28, 2005, against MRA Food, Inc. d/b/a Casablanca Foods, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act.

On April 25, 2005, the General Counsel filed a Motion for Default Judgment with the Board. On May 12, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by March 15, 2005, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letters dated March 17 and April 7, 2005, notified the Respondent that unless an answer was received by March 24 and April 14, 2005, respectively, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Maryland corporation with an office and place of business in Dum-

fries, Virginia, has been engaged in the business of operating a retail food store.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenue in excess of \$500,000 and received goods and supplies valued in excess of \$5000 directly from points located outside the Commonwealth of Virginia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that United Food and Commercial Workers Union, Local 400 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, Buyng Kang has held the position of president and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The employees of the Respondent, as described in article II of the collective-bargaining agreement described below (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since in or around 2002, the Respondent, as a successor employer, has recognized the Union as the collective-bargaining representative of the employees in the unit, and executed an extension to the predecessor employer's collective-bargaining agreement whose term was September 2, 1999 to September 7, 2002. The term of the collective-bargaining agreement was extended by the mutual agreement of the parties until November 15, 2002, and further extended to April 15, 2003.

At all times since in or around 1984, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

At various times during 2002 through August 13, 2004, the Respondent and the Union met for the purpose of collective bargaining with respect to wages, hours, and other terms and conditions of employment of the unit.

Since on or about August 13, 2004, the Respondent has refused to meet for the purpose of negotiating a collective-bargaining agreement.

By letter dated October 8, 2004, the Union requested that the Respondent furnish it with the following information:

1. Name, address, telephone number, social security number, date of hire, classification, rate of pay, date of birth, sex (M/F), marital status and number of dependents for each employee in the bargaining unit.

2. Job descriptions and responsibilities for each job classification.

3. Average weekly number of employees and hours worked at each rate.
4. Total straight time hours.
5. Overtime hours and total premium expense by premium rate.
6. Paid sick time hours and total expense.
7. Weekend/Sunday premium hours and total premium expense by premium rate.
8. Holiday hours worked and total expense.
9. Shift/Night premium hours by premium rate.
10. Vacation hours.
11. Total annual labor cost.
12. Copy of all company policies.
13. Copy of employee handbook.
14. Copy of all disciplinary policies.
15. Copy of all employee benefit plans, including but not limited to, ESOP and 401-K's.
16. Cost of each benefit referenced in #15 above to the Employer, along with the cost to employees, if any.
17. 401-K Plan
  - (a) the Plan Document;
  - (b) any Trust Agreement;
  - (c) the latest Summary Plan Description with amendments, if any;
  - (d) any collective bargaining agreements under which the Plan is maintained;
  - (e) any other rules and regulations governing the operation of the Plan not described above;
  - (f) the last three Form 5500s filed with the federal government;
  - (g) the last three audited financial statements for the Plan;
  - (h) the last three consultant reports for the Plan, if any;
  - (i) the last three Summary Annual Reports distributed to participants;
  - (j) the last three Summary of Material Modifications distributed to participants;
  - (k) any contracts between the Plan and any third party including, but not limited to, insurance contracts and contracts with custodians of assets, administrators of the investment program, and investment managers;
  - (l) any policies adopted by the fiduciaries of the Plan, including, but not limited to, any investment policy, trustee expense reimbursement policy, policy for sharing costs with any other entity (including the Plan

sponsor), policy for collecting delinquent payments due to the Plan, QDRO policy, and fund policy;

(m) any insurance policy and/or bonding policy covering the Plan and its fiduciaries;

(n) minutes of any meetings regarding the Plan during the last three years containing a description of Plan rules, policies or procedures under which the Plan was established or is maintained, a discussion of the consideration and retention of any provider of service to the Plan, or a discussion of the investment options for participants, if any were discussed;

(o) the last Internal Revenue Service determination of tax qualification for the Plan;

(p) the results of discrimination tests under the Internal Revenue Code;

(q) if the Plan participants have the authority to direct the investment of their accounts, the Plan's procedures establishing the permissible investment options, how often changes between investments may be made, and any other procedures governing a participant's right to direct his or her investments;

(r) if the Plan participants have the authority to direct the investment of their accounts, the materials provided to participants to direct their own investments, including forms used to select investments, prospectuses for the Plan's investments and any other materials provided to participants regarding the investments offered under the Plan; and

(s) enrollment forms and Notices of Enrollment

With the exception of employee social security numbers, the information requested by the Union is necessary for and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.<sup>1</sup>

Since on or about October 8, 2004, the Respondent has failed and refused to furnish the Union with the requested information.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representa-

<sup>1</sup> The Board has held that social security numbers are not presumptively relevant to a union's duties as an exclusive collective-bargaining representative. Accordingly, in the absence of a showing here of their potential or probable relevance, we deny the General Counsel's motion with respect to the Respondent's failure to provide social security numbers, and remand that issue to the Region for further appropriate action. *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 fn. 2 (2003).

tive of the unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing and refusing since August 13, 2004, to bargain with the Union, we shall order the Respondent, on request, to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit and, if an understanding is reached, to embody that understanding in a signed agreement.<sup>2</sup>

In addition, having found that the Respondent has violated Section 8(a)(1) and (5) by failing and refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested in its October 8, 2004 letter, with the exception of employees' social security numbers.

#### ORDER

The National Labor Relations Board orders that the Respondent, MRA Food, Inc., d/b/a Casablanca Foods, Inc., Dumfries, Virginia, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Union, Local 400 as the exclusive collective-bargaining representative of the employees in the bargaining unit described in article II of the September 2, 1999—September 7, 2002 collective-bargaining agreement, which was extended to April 15, 2003.

(b) Failing and refusing to furnish the Union with information necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the unit employees.

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In the complaint, the General Counsel requests that the Board order the Respondent to bargain in good faith with the Union, on request, "for the period required by *Mar-Jac Poultry*, as the recognized bargaining representative in the appropriate unit." We decline to grant this remedy. Pursuant to *Mar-Jac Poultry Co.*, 136 NLRB 765 (1962), the Board construes a newly-certified union's initial period of certification as beginning on the date that the respondent employer begins to bargain in good faith. Thus, by its terms, the *Mar-Jac* remedy only applies in situations involving a certified union. Here, there is no allegation or evidence that the Union was ever certified by the Board. Accordingly, the *Mar-Jac* extension of a union's "certification" year is not an appropriate remedy for the Respondent's failure to bargain in the instant case.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with United Food and Commercial Workers Union, Local 400 as the exclusive collective-bargaining representative of the unit employees concerning terms and conditions of employment and, if an understanding is reached, embody that understanding in a signed agreement.

(b) Furnish the Union with the information it requested by letter dated October 8, 2004, with the exception of employee social security numbers.

(c) Within 14 days after service by the Region, post at its facility in Dumfries, Virginia, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 13, 2004.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 23, 2005

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Robert J. Battista,

Chairman

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Wilma B. Liebman,

Member

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<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

##### NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with United Food and Commercial Workers Union, Local 400 as the exclusive collective-bargaining representative of the employees in the bargaining unit described in article II of the September 2, 1999—September 7, 2002 collective-bargaining agreement, which was extended to April 15, 2003.

WE WILL NOT fail and refuse to furnish the Union with information necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain with United Food and Commercial Workers Union, Local 400 as the exclusive collective-bargaining representative of the unit employees concerning terms and conditions of employment and, if an understanding is reached, embody that understanding in a signed agreement.

WE WILL furnish the Union with the information it requested by letter dated October 8, 2004, with the exception of employee social security numbers.

MRA FOOD, INC. D/B/A CASABLANCA FOODS, INC.